

STATE OF MICHIGAN
COURT OF APPEALS

JAN KAY ESTES, Personal Representative of the
Estate of DOUGLAS DUANE ESTES,

Plaintiff-Appellant,

v

JEFF EDWARD TITUS,

Defendant-Appellee,

and

JULIE L. SWABASH, f/k/a JULIE L. TITUS,

Appellee.

FOR PUBLICATION
December 21, 2006
9:10 a.m.

No. 261968
Kalamazoo Circuit Court
LC No. 02-000529-NZ

Official Reported Version

Before: O'Connell, P.J., and White and Markey, JJ.

O'CONNELL, P.J. (*concurring in part and dissenting in part*).

I concur with the majority opinion that the trial court lacked authority to set aside or modify a divorce judgment entered by a different circuit judge. However, I respectfully disagree with the majority opinion that Julie Titus can be made a party to this lawsuit or that plaintiff can recover any "marital assets"¹ by way of a collateral attack on a valid divorce judgment. I would affirm the trial court for the following reasons.

First, plaintiff filed a motion under MCR 2.209(A)(3) to intervene in the divorce proceedings for the purpose of arguing that the property-settlement provisions dividing the marital assets constituted a fraud upon defendant's creditors, such as herself, and were inequitable. Judge Patricia N. Conlon, the judge in defendant's divorce, denied the motion to intervene. Plaintiff did not appeal this ruling, but instead attempted to add Julie Titus as a party to the present wrongful death lawsuit. In my opinion, plaintiff's remedy was to appeal the

¹ The majority opinion's reasoning raises, but does not answer, the issue whether a judgment debtor can attach marital property for the debt of one of the spouses.

decision of Judge Conlon, not to attempt to add Julie Titus as a party to another lawsuit. I note that Julie Titus did not do any act that would subject her to being a party in a wrongful death lawsuit.

In essence, adding Julie Titus as a party to this lawsuit is an attempt to institute a collateral attack on the valid divorce judgment. I am not aware of any Michigan cases that allow a collateral attack on a valid divorce judgment. In fact, my research indicates that divorce judgments are not typically subject to third-party attacks. *White v Michigan Life Ins Co*, 43 Mich App 653, 657; 204 NW2d 772 (1972).

Second, on appeal, plaintiff asks this Court to make Julie Titus a party to this lawsuit. However, plaintiff did not include this issue among the questions presented in her brief on appeal, as required by MCR 7.212(C)(5). Therefore, in my opinion, this issue is not properly before this Court, and review of the issue is inappropriate. *Weiss v Hodge (After Remand)*, 223 Mich App 620, 634; 567 NW2d 468 (1997).

I would affirm the decision of the trial court.

/s/ Peter D. O'Connell